

**REMARKS**

Applicant respectfully requests reconsideration and continued prosecution of this application in view of the following remarks.

**1. Status of the Claims**

Claims 1-20 are pending in this application.

**2. 35 U.S.C. §102 Rejection**

Claims 1-4, 6-7, 9-10 and 17 stand rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 6,287,268 to Gilmour (Gilmour). Applicant respectfully traverses this rejection.

As amended, independent claim 1 has been clarified to recite that the first and second knee straps cross at the side of the knee opposite the hinge and that the second knee strap extends across the front of the knee below the kneecap. Gilmour, to the contrary, only discloses straps 15 and 16 crossing behind the knee. Therefore, Gilmour fails to anticipate or render obvious claim 1.

In addition, Applicant respectfully disagrees with the Examiner's statement that hinge 2 of Gilmour is positionable "proximate (near)" one knee compartment while the first and second straps cross "proximate (near)" a second opposed knee compartment. With reference to the sole Figure of Gilmour, straps 15 and 16 cross at a point that is less than halfway around the back of knee 14 from hinge 2 and the first knee compartment. In other words, the point of crossing is separated from the second knee compartment by more than half of the entire distance from one side of the knee to the other. Applicant respectfully asserts that points separated by such a distance are not "proximate" in the context of a knee unloading orthotic device. In proper perspective, they are no more proximate each other, in terms of location on a knee, than Peru and the North Pole, in terms of world geography.

Furthermore, the physical distance (more than one quarter of the circumference of the knee) between the point of crossing of straps 15 and 16 of Gilmour and the second knee compartment is very significant from a functional standpoint. The present invention according to independent claims 1 and 17 is a knee brace and a method of using it for unloading pressure to a knee compartment

of a person's knee, the knee brace having a hinge positionable proximate a person's first knee compartment, upper and lower leg supports, and knee straps for crossing proximate a person's opposed second knee compartment and providing a corrective unloading force to the person's first knee compartment. Because Gilmour's straps cross at a point behind the knee rather than at a point at the opposite side of the knee from the hinge, Gilmour's straps provide a *forward* force to the back of the knee to give flexion, see Gilmour, col. 3, lns. 18-19, rather than a *lateral* force to the side of the knee to unload a knee compartment at the opposite side of the knee. For at least the foregoing reasons, Gilmour fails to anticipate or render obvious any of claims 1-4 or 17.

Gilmour also differs greatly from the present invention according to independent claim 6, which is a knee brace for providing a varus/valgus correction to a person's knee. As discussed above, Gilmour's knee brace only provides flexion and not a varus/valgus correction, which would require a lateral rather than a forward force. See col. 3, lns. 18-19. For at least the foregoing reasons, Gilmour fails to anticipate or render obvious any of claims 6, 7, 9 and 10.

### **3. 35 U.S.C. §103 Rejections**

#### **a. Gilmour, in View of Davis, Does Not Disclose, Suggest or Provide a Reason for Developing a Knee Brace Of The Present Invention**

Claims 5, 8, 11-14 and 18-20 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Gilmour in view of U.S. Patent No. 5,421,810 to Davis et al. (Davis). Applicant respectfully traverses this rejection.

Davis teaches a hip brace comprising a pivot joint having intermeshing teeth, but does not disclose a knee brace, or for that matter any brace having a strap connecting an upper support to a lower support. See, e.g., Fig. 1; col. 2, lns. 52-65. Therefore, Davis cannot supply the deficiencies of Gilmour, which fails to disclose a knee brace having a strap or straps configured to provide a corrective unloading force to a knee compartment adjacent a hinge of the brace, according to claim 1, configured to provide a varus/valgus correction to the wearer's knee, according to claim 6, or crossing proximate a second knee compartment opposite a first knee compartment adjacent a hinge of the brace, according to claim 17. The above reasoning thus applies with respect to independent claims 1, 6 and 17. Moreover,

like claim 1, claim 13 also requires a brace that provides a corrective unloading force to a first knee compartment proximate a hinge of the brace, and has been clarified to recite a knee strap which extends around the front, opposite side, and back of the knee, unlike straps 15 and 16 of Gilmour which only extend around the back of the knee. For at least the foregoing reasons, Gilmour in view of Davis fails to render obvious any of claims 5, 8, 11-14 and 18-20.

**b. Gilmour, in View of Davis and Castillo, Does Not Disclose, Suggest or Provide a Reason for Developing the Knee Brace Of Claims 15-16**

Claims 15-16 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Gilmour in view of Davis and U.S. Patent No. 5,135,469 to Castillo (Castillo). Applicant respectfully traverses this rejection.

Castillo discloses a knee brace having a pair of hinges connecting a pair of upper struts to a pair of lower struts, col. 2, Ins. 17-21, the upper struts interconnected by first and second cuff members, and the lower struts interconnected by third and fourth cuff members, col. 2, Ins. 34-37. Castillo does not disclose a knee brace having a strap connecting an upper leg support to a lower leg support. Therefore, Castillo fails to supply the deficiencies of Gilmour and Davis with respect to independent claim 13, and for at least the reasons stated above, Gilmour in view of Davis and Castillo fails to render obvious either of claims 15-16, which depend from claim 13.

**CONCLUSION**

In view of the foregoing, claims 1-20 are in condition for allowance. An early indication of allowance is solicited.

Respectfully submitted,



James D. Ryndak  
Reg. No. 28,754  
Attorney for Applicant

Date: 11/12/2008

Appl. No. 10/609,986  
Attorney Docket No. 26111-10281

RYNDAK & SURI LLP  
200 W. Madison Street, Suite 2100  
Chicago, IL 60606  
312-214-7770 (telephone)  
312-214-7715 (facsimile)